
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 628 Session of
2009

INTRODUCED BY M. WHITE, EARLL, ORIE, KITCHEN, ERICKSON,
WILLIAMS, ROBBINS, COSTA, WOZNIAK, STOUT, MELLOW, GORDNER,
O'PAKE, D. WHITE AND FERLO, MARCH 16, 2009

REFERRED TO JUDICIARY, MARCH 16, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in post-trial matters,
3 prohibiting the imposition of the death sentence in cases of
4 mental retardation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 9543(a)(2) and 9545(b)(1) of Title 42 of
8 the Pennsylvania Consolidated Statutes are amended to read:

9 § 9543. Eligibility for relief.

10 (a) General rule.--To be eligible for relief under this
11 subchapter, the petitioner must plead and prove by a
12 preponderance of the evidence all of the following:

13 * * *

14 (2) That the conviction or sentence resulted from one or
15 more of the following:

16 (i) A violation of the Constitution of this
17 Commonwealth or the Constitution or laws of the United
18 States which, in the circumstances of the particular

1 case, so undermined the truth-determining process that no
2 reliable adjudication of guilt or innocence could have
3 taken place.

4 (ii) Ineffective assistance of counsel which, in the
5 circumstances of the particular case, so undermined the
6 truth-determining process that no reliable adjudication
7 of guilt or innocence could have taken place.

8 (iii) A plea of guilty unlawfully induced where the
9 circumstances make it likely that the inducement caused
10 the petitioner to plead guilty and the petitioner is
11 innocent.

12 (iv) The improper obstruction by government
13 officials of the petitioner's right of appeal where a
14 meritorious appealable issue existed and was properly
15 preserved in the trial court.

16 (vi) The unavailability at the time of trial of
17 exculpatory evidence that has subsequently become
18 available and would have changed the outcome of the trial
19 if it had been introduced.

20 (vii) The imposition of a sentence greater than the
21 lawful maximum.

22 (viii) A proceeding in a tribunal without
23 jurisdiction.

24 (ix) The existence of mental retardation as defined
25 in section 9711(q) (relating to sentencing procedure for
26 murder of the first degree).

27 * * *

28 § 9545. Jurisdiction and proceedings.

29 * * *

30 (b) Time for filing petition.--

1 (1) Any petition under this subchapter, including a
2 second or subsequent petition, shall be filed within one year
3 of the date the judgment becomes final, unless the petition
4 alleges and the petitioner proves that:

5 (i) the failure to raise the claim previously was
6 the result of interference by government officials with
7 the presentation of the claim in violation of the
8 Constitution or laws of this Commonwealth or the
9 Constitution or laws of the United States;

10 (ii) the facts upon which the claim is predicated
11 were unknown to the petitioner and could not have been
12 ascertained by the exercise of due diligence; [or]

13 (iii) the right asserted is a constitutional right
14 that was recognized by the Supreme Court of the United
15 States or the Supreme Court of Pennsylvania after the
16 time period provided in this section and has been held by
17 that court to apply retroactively[.]; or

18 (iv) the petitioner claims he is a person with
19 mental retardation as defined in section 9711(g)
20 (relating to sentencing procedure for murder of the first
21 degree), and the time for raising that claim has expired
22 as of the effective date of this subparagraph. Any
23 petition invoking this exception must be filed within 365
24 days of the effective date of this subparagraph or of the
25 conclusion of any appeal pending on the effective date of
26 this subparagraph from the judgment of sentence or from
27 the denial of a previous petition under this chapter.

28 * * *

29 Section 2. Sections 9546 and 9711 of Title 42 are amended by
30 adding subsections to read:

1 § 9546. Relief and order.

2 * * *

3 (a.1) Mental retardation.--Upon a finding that evidence has
4 been presented that is sufficient to establish, by a
5 preponderance of the evidence, that the petitioner is a person
6 with mental retardation as defined in section 9711(q) (relating
7 to sentencing procedure for murder of the first degree), the
8 court shall direct that the sentence of death be vacated and
9 that the defendant be sentenced to life imprisonment.

10 * * *

11 § 9711. Sentencing procedure for murder of the first degree.

12 * * *

13 (e.1) Mental retardation.--

14 (1) No person with mental retardation shall be eligible
15 for the death penalty.

16 (2) (i) Counsel for the defendant may file a written
17 motion alleging reasonable cause to believe that the
18 defendant is a person with mental retardation and
19 requesting an order directing that a hearing be conducted
20 prior to trial to determine if the defendant is not
21 eligible for the death penalty.

22 (ii) The motion shall be filed at least 90 days
23 before the commencement of the trial or later upon just
24 cause shown to the court.

25 (iii) The motion shall set forth in particular the
26 reasons and grounds to support the reasonable cause to
27 believe that the defendant is a person with mental
28 retardation.

29 (iv) Upon receipt of the motion that the defendant
30 is not eligible for the death penalty, the trial court

1 shall conduct a hearing for the presentation of evidence
2 regarding the defendant's mental retardation. Both the
3 Commonwealth and the defendant shall have the opportunity
4 to present evidence, including expert testimony. The
5 court shall order an expert psychiatric or psychological
6 examination of the defendant to be performed by a
7 licensed psychiatrist or licensed psychologist who is an
8 expert in the diagnosis and evaluation of mental
9 retardation.

10 (v) Prior to the time set for the hearing on the
11 pretrial motion, the Commonwealth shall have the same
12 rights of discovery as exist under the Pennsylvania Rules
13 of Criminal Procedure, including, but not limited to, the
14 production of reports from experts and production of any
15 information that will further a full, fair and
16 expeditious resolution of the determination of whether
17 the defendant is a person with mental retardation.

18 (vi) The court shall find that the defendant is not
19 eligible for the death penalty if it finds that the
20 defendant is a person with mental retardation. If the
21 court finds that the defendant is eligible for the death
22 penalty, the trial may proceed as a capital case. If the
23 court finds that the defendant is a person with mental
24 retardation, the trial shall proceed as a noncapital
25 trial.

26 (vii) If the court enters an order under
27 subparagraph (vi) finding that the defendant is a person
28 with mental retardation, the Commonwealth may appeal as
29 of right from the order under Pa.R.A.P. 311 (a) (9)
30 (relating to interlocutory appeals as of right). The

1 taking of an appeal by the Commonwealth under this
2 subsection stays the effectiveness of the court's order
3 and any order fixing a date for trial for purposes of
4 Pa.R.Crim.P. 600 (relating to prompt trial) and speedy
5 trial rights under the Constitution of the United States
6 and the Constitution of Pennsylvania.

7 (viii) The pretrial determination of the court shall
8 not preclude the defendant from raising any legal defense
9 or factual evidence including, but not limited to, the
10 existence of mental retardation during the trial or the
11 sentencing phase of a capital trial under this section.

12 (ix) The jury shall not be informed of the prior
13 proceedings or the court's findings concerning the
14 defendant's motion with respect to the issue of mental
15 retardation.

16 (3) If a defendant has already been sentenced to death
17 as of the effective date of this subsection and postsentence
18 motions are still pending or a direct appeal is still
19 pending, under rule of court, a defendant may file a motion
20 raising a claim that he is ineligible for a death sentence
21 because he is a person with mental retardation. The trial
22 court that imposed the sentence on the defendant shall
23 conduct an evidentiary hearing on the motion and determine
24 whether the defendant is a person with mental retardation as
25 defined in subsection (g).

26 * * *

27 (p) Burden of proof.--

28 (1) A defendant who raises a claim of mental retardation
29 must prove the elements of subsection (g) by a preponderance
30 of the evidence.

1 (2) A defendant who raises a claim of mental retardation
2 waives confidentiality and privileges. The following apply:

3 (i) The defendant's medical, corrections, military
4 and scholastic records may be reviewed by the parties.

5 (ii) The defendant's previous physicians, teachers
6 and mental health providers may be contacted by the
7 parties and current mental health examiners to learn of
8 the defendant's background relative to the claim of
9 mental retardation.

10 (g) Definition.--As used in this section, the term "person
11 with mental retardation" means a person who has a mental
12 disability characterized by significant limitations in
13 intellectual functioning and in adaptive behavior as expressed
14 in conceptual, social and practical adaptive skills, which the
15 defendant must prove by establishing all of the following
16 elements by a preponderance of the evidence:

17 (1) That his full-scale intelligence quotient is two
18 standard deviations below the mean, as determined by a
19 standardized test generally accepted in the profession and
20 individually administered by a licensed psychologist.

21 (2) That he has significant limitations, as determined
22 by a standardized test generally accepted in the profession
23 and individually administered by a licensed psychologist, in
24 adaptive behavior as manifested by performance that is at
25 least two standard deviations below the mean of:

26 (i) conceptual, social or practical adaptive
27 behavior; or

28 (ii) an overall score on a standardized measure of
29 conceptual, social and practical skills.

30 (3) That his mental disability was present before the

1 age of 18 as demonstrated by contemporaneous written records.
2 However, contemporaneous written records shall not be
3 required where the defendant establishes that such written
4 records are lost or missing or that the defendant was
5 deprived of schooling or other social services contacts in
6 which such contemporaneous records would be created.

7 Section 3. (a) The amendment or addition of 42 Pa.C.S. §§
8 9543(a)(2), 9545(b)(1), 9546 (a.1) and 9711(e.1), (p) and (q)
9 shall apply to persons who are sentenced on or after the
10 effective date of this section.

11 (b) If a defendant who has already been sentenced to death
12 as of the effective date of this section wishes to raise the
13 issue of mental retardation and postsentence motions are still
14 pending, the defendant may, under court rule, amend the
15 postsentence motions to raise the claim that imposition of the
16 death penalty would have been barred under 42 Pa.C.S. §
17 9711(e.1) if it had been in effect at the time of the sentencing
18 hearing. The trial court that imposed the sentence on the
19 defendant shall conduct an evidentiary hearing on the motion.
20 Upon a finding that evidence has been presented sufficient to
21 establish that the defendant is a person with mental retardation
22 as provided under 42 Pa.C.S. § 9711(e.1), the court shall vacate
23 the sentence of death and shall sentence the defendant to life
24 imprisonment.

25 (c) If a defendant who has already been sentenced to death
26 as of the effective date of this section wishes to raise the
27 issue of mental retardation and direct appeal is still pending,
28 the defendant may, pursuant to court rule, after disposition of
29 the appeal, raise the issue in a petition under 42 Pa.C.S. §
30 9545(b) after the disposition of the appeal.

1 Section 4. This act shall take effect immediately.